

Notice of Public Comment Period – Gillie Creek
Reasonable Grounds to Conduct a Use Attainability Analysis
Public Comment Summary
Comment Period Ending November 1, 2010

Citizen Comment

Commenter	Comment Summary
David Bernard	<p>Stated his concern about the quality of life and appropriate development in Richmond, as well as in stream restoration. A UAA, if successful, would lead to no improvement to the creek which is unacceptable. Presence or lack of recreation in the creek is no excuse to leave a water body in a state of impairment. Gillie Creek empties to a flat water section of the James River that is accessible to a large population that recreate there. Many canoeists and kayakers use this segment of the James River.</p> <p>Nitrogen, phosphorus, and sediment loads from CSOs are a burden for the James, affecting both the river and the Chesapeake Bay. These nutrients would be a target for the Chesapeake Bay TMDL regardless of the UAA's outcome. Richmond should be granted a five year delay to September 30, 2015 to develop a master plan for a Gillie Creek Urban Stream Restoration, and a further 10 years to implement the plan. This timetable parallels the Bay restoration timeline.</p> <p>The master plan should include total separation of storm and sanitary sewers, removal of the concrete channel, storm water infiltration to the maximum extent possible, and restoration of the natural stream channels and riparian zone vegetation. Sewer infrastructure construction should be planned and built in coordination with smart grid electrical upgrades, transportation needs, landscaping, and possible non-potable water distribution system. Ultimately, the Gillie Creek watershed will be fitted with green infrastructure. No permits for floodplain construction should be issued in the interim. All new construction should meet the highest storm water standards.</p>
Karl Corley	Finds it appalling that the city has no plan to the pollution problem in Gillie Creek.
Benjamin Evans	Mr. Evans states he is a City resident within the Gillie Creek watershed and asks that the City of Richmond not be allowed to initiate a Use Attainability Analysis for Gillie Creek. He agrees with comment submitted by Kristen Hughes Evans (below).
Kristen Hughes Evans	As a City resident living in the Gillie Creek watershed, she adamantly opposes the City's request to initiate a Use Attainability Analysis for the attainment of the designated uses for Gillie Creek. She recognizes that treating the Combined Sewer Overflow (CSO) systems is expensive but, as a citizen that places great value on clean water, she strongly suggest that the City develop a plan to get the job done. She states her realization that such a plan may take years to achieve but that is preferable to continued impairment of Gillie Creek and the James River. She would like to make it clear to the SWCB and DEQ that Gillie Creek flows next to a public park and is accessible through the entire length of the park segment. There are no chain link fences to prevent public access. She requests that the SWCB reject this petition to begin the UAA process for the creek and instead, instruct the City to focus on the TMDL implementation plan process. She urges the City to focus on innovative, cost-effective strategies to immediately remediate water quality problems, and develop a long-term plan to end the dumping of raw sewage into Gillie Creek, and subsequently the James River. She states that writing off Gillie Creek water quality is simply unacceptable.
Garry Marshall	He states that he lives near Gillie Creek and has witnessed people in the creek walking or painting graffiti. He asks that the City clean up this waterway as it impacts the health of the James River and Chesapeake Bay and it is the responsibility of the City to do so.
Kate Meacham	Stated that she also lives in the Gillie Creek watershed and concurs with Kristin Hughes' comment (above).

<p>Bill Shanabruch</p>	<p>He is opposed to the City of Richmond's request to perform a UAA for Gillie Creek for the following reasons:</p> <p>1) The City has not evaluated all "reasonable" options to address the CSO problem in Gillie Creek. It is disingenuous to use the "knee of the curve" argument based on the outdated solution of a \$300 million tunnel for collection of stormwater. Other CSO cities (e.g. Portland, Philadelphia, Washington, DC) have committed substantial resources to reducing stormwater volume at the source with a host of green practices (pervious pavement, rainwater harvesting, rain gardens, bio-retention, etc.). In reviewing the practicality of green solutions, the analysis must consider social and economic factors beyond the installation cost of these smaller-scale projects. These factors include water quality and quantity, energy consumption, neighborhood vitality, citizen education, and reduction in long-term maintenance costs.</p> <p>2) Since the TMDL public meeting last June, he has been receiving CSO overflow notices from the City and has been stunned by how little rain triggers an overflow event. He states that a 21st century American city can do better than this.</p> <p>3) He states that the DEQ preliminary models that show no additional CSO controls beyond Alternative E are required to meet the water quality standards in the James River are mentioned on page 2-1 of Richmond's UAA request. What is not mentioned is that the models were not run for the segment of the James River closest to Gillie Creek. He questions the possibility for Gillie Creek CSO discharges to have no significant impact on the James near the mouth of the creek. He states that the segment of the James near the mouth of Gillie Creek is used heavily for recreation (fishing, kayaking, and the swimming leg of a triathlon). This situation creates a public safety issue. DEQ's current study to determine the influence of Gillie Creek CSO discharges on the James River should be completed prior to granting permission to the City to do a UAA.</p> <p>4) On page 4-1 of the UAA request it states "...the City is truly trying to make the most appropriate investments to improve the water quality in our local waterways." Mr. Shanabruch states that the City would not be proposing to waste time and money doing a UAA prior to TMDL implementation and post-implementation monitoring if it was genuinely attempting to do the right thing and that the UAA request is a transparent attempt to circumvent the spirit of the TMDL process and avoid improving water quality in Gillie Creek (and the James River) beyond Alternative E. He states the necessity for doing a UAA will become apparent after reasonable TMDL implementation efforts have been made.</p>
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State Agency Comment

Commenter	Comment Summary
<p>VA Dept. Conservation & Recreation</p> <p>Dr. Ram Gupta, TMDL Project Manager</p>	<p>Prior to a UAA, a TMDL Implementation Plan (IP) is developed, control measures are implemented on the ground and water quality improvements are monitored. If water quality standards are still not attained, only then is a UAA performed. Therefore, based on the above, it is suggested that prior to initiating a UAA study, the implementation plan be developed. The Plan will include various technical information and other details which will support the UAA study. The Plan might include any hydrologic modification and non-pollutant related factors that may improve water quality.</p> <p>Based on the preliminary modeling runs, it was indicated at the public meeting that change in designated use will not affect James River water quality. It is suggested that modeling runs be finalized, and water quality monitoring data collected on James River downstream needs to be analyzed to support conclusively that the changed designated use (630 cfu/100ml) will not negatively impact James River water quality with regard to primary contact recreation. Further, rather removing Gillie Creek's designated use; a</p>

	temporary use removal during extreme storm conditions is also an option to be considered. The public notice indicates that water quality problems exist during rainfall events greater than 0.2", due to combined sewer overflows. A temporary use removal in the Gillie Creek trapezoidal concrete channel during extreme storm overflows might be an alternative option to the primary contact use removal in Gillie Creek.
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Environmental Group Comment

Commenter	Comment Summary
Coastal Canoeists David Bernard, Conservation Chair	Coastal Canoeists is a state-wide recreational paddling club and Mr. Bernard states that the James is their "home river" and its water quality is important for their health as well as their enjoyment. He conveyed appreciation for past efforts of DEQ and Richmond that have improved degraded water quality that existed in the 1970's. Coastal Canoeist members are not happy with Richmond's plan to seek a UAA and thereby avoiding the necessary task of ending the Combined Sewer Overflow (CSO) problem. Water quality improvements in the James should not stop now. (Remainder of comment is identical to that provided by David Bernard in preceding "Citizen Comment" section.)
Sierra Club, VA Chapter David Bernard, Water Quality Chair	Mr. Bernard conveyed appreciation for past efforts of DEQ and Richmond that have improved impaired degraded water quality that existed in the 1970's. Sierra Club chapter leadership was not happy with Richmond's plan to seek a UAA and avoid the necessary task of ending the Combined Sewer Overflow (CSO) problem. Water quality improvements in the James should not stop now. (Remainder of comment is identical to that provided by David Bernard in preceding "Citizen Comment" section.)
Southern Environmental Law Center (SELC) Marirose J. Pratt, Associate Attorney	<p>They urge the SWCB to deny the City's request as preparation of a UAA at this time is premature and wholly unjustified due to:</p> <ol style="list-style-type: none"> 1) Significant data gaps regarding the degree to which Gillie Creek impacts water quality in the James. 2) The insufficient analysis of a full range of stormwater management scenarios, including the use of green infrastructure that could be employed towards attainment. 3) Lack of evidence regarding the existence or non-existence of "existing uses" in Gillie Creek <p>Under both state and federal regulations governing designated use changes, a designated use may not be removed if: (1) removing the use would prevent the attainment and maintenance of water quality standards downstream; (2) the use can be attained by implementing technology-based effluent limits for point sources or by implementing cost-effective and reasonable BMPs for non-point source control; or (3) it is an existing use. Even when all three of these conditions are met, a designated use may only be removed if attainment is not feasible because one or more of the six specific factors set forth in 40 C.F.R. 131.10(g) and 9 VAC 25-260-10 H exist. The City must provide reasonable grounds establishing that the three prerequisites to changing a designated use exist and that at least one of the six factors set forth in 40 C.F.R. 131.10(g) and 9 VAC 25-260-10 H exist. They state that the City has failed to present reasonable grounds demonstrating that a UAA for Gillie Creek is warranted. They ask the SWCB to deny the City's request or, at the least, delay the UAA pending completion of a robust TMDL IP and reasonable actions towards attainment have been taken.</p>

Municipalities/Municipal Groups

Commenter	Comment Summary
City of Richmond Robert Steidel, Dept. Public Utilities Interim Director	States that the City believes the Reasonable Grounds Documentation to Conduct a Recreational Use Attainability Analysis for Gillie Creek fulfills the statutory mandate for reasonable grounds. They state their belief that a recreational UAA conducted concurrently with development of a TMDL Implementation Plan for the paved channel portion of Gillie Creek may support an amendment to (change) its designated use. A map of the channelized portion and indicating adjacent parcels was provided that shows the creek is not within the Gillie Creek Nature Area.

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<p>Virginia Association of Municipal Wastewater Agencies (VAMWA)</p> <p>Christopher D. Pomeroy, Esq.</p>	<p>On behalf of VAMWA, Mr. Pomeroy states that Virginia and other states have designated uses without regard for attainability and the negative socioeconomic impacts that may be caused by related federal and state implementation mandates. He states that it has come to be widely accepted among water quality professionals that “[s]tates should develop appropriate use designations for waterbodies in advance of assessment and refine these use designations prior to TMDL development” and, further, that “use attainability analysis should be considered for all waterbodies before a TMDL is developed.” NRC, <i>Assessing the TMDL Approach to Water Quality Management</i> (2001). They urge the SWCB to authorize the study to proceed.</p>
<p>Virginia Municipal League (VML)</p> <p>Joe Lerch, Director of Environmental Policy</p>	<p>On behalf of the VML, Mr. Lerch states their finding of sufficient reasonable grounds that attainment of a recreational use for the concrete channel is not feasible. The estimated cost of \$300 million to attain that use for a channel not used for that purpose is unjustified and unreasonable.</p> <p>As supporting relevant documentation they provide an EPA case study entitled <i>Suspension of Recreational Beneficial Uses in Engineered Channels During Unsafe Wet Weather Conditions</i> (2006). The case study documents a UAA for highly modified stream channels in the Los Angeles region undertaken by the Los Angeles Regional Water Quality Control Board (RWQCB). The streams have been straightened and concrete lined to move large volumes of water from urban areas to the ocean. The UAA showed that recreation is not an existing use because the channels were modified before the Clean Water Act and swift water conditions during rain events made for hazardous conditions within the channels. The study showed the use would not be attained through effluent limits or best management practices because the physical characteristics of the waterbody rather than water quality precluded the use. EPA approved revisions that suspend the recreational use for these modified streams during and for 24 hours after rainfall events of a certain magnitude (generally, rainfall greater than or equal to ½ inch).</p>